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10/541,620	11/17/2006	John Glen Cousineau	39320.0002	7835
41881 7590 03/26/2010 BRANDON N. SKLAR, ESQ. (PATENT PROSECUTION) KAYE SCHOLER, LLP 425 PARK AVENUE NEW YORK, NY 10022-3598				
EXAMINER				
POUNCELL, DARNELL A				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,620

Applicant(s)

COUSINEAU ET AL.

Examiner

DARNELL POUNCIL

Art Unit

3688

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2009 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

N DETAILED ACTION

Claim Summary

1. The Office Action is in response to the amendment filed on December 09, 2009. Claims 1, 3-9, 13, 17 have been amended and newly added claim 18. Therefore claims 1 - 18 are currently pending and have been considered below.

Response to Amendment

2. In light of the applicant's submission filed December 09, 2009, the Examiner has withdrawn the 35 U.S.C. 101 rejections.

In light of the applicant's submission of updated drawings the Examiner has maintained the objection to the drawings. The drawings are still too small, not readable and are not labeled to correspond to the reference numbers in the specification. Specifically the wording and size of figures 1 -26 make them unreadable. Furthermore figures 2, 3, 9, 19, 20, 21, and 22, are not labeled to correspond to the reference numbers in the specification.

Drawings

3. The informal drawings are not of sufficient quality to permit examination. Accordingly, replacement drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to this Office action. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Page 12, lines 20-32 (Figure 2), page 13 lines 5 – 32 and page 14 line 3 (Figure 3), page 15 lines 19-28 (Figure 9), page 19 lines 31 – pages 20 lines 4 – 32, page 21 lines 5-30 (Figure 19), page 22 lines 6 (Figure 20), page 22 lines 10 - .page 23 lines 5 (Figure 21), and page 23 lines 6 (Figure 22). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Applicant is given a TWO MONTH time period to submit new drawings in compliance with 37 CFR 1.81. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit replacement drawing sheets will result in ABANDONMENT of the application.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
6. Claims 1-3, 5-7, 10, 11,13-17,are rejected under 35 U.S.C. 103(a) as being unpatentable over Foulger (2002/0032738) in view of Aram (2002/0072988)

In regards to **claim 1**: Foulger discloses, a distributed electronic marketing, sales and service management system, enabling the creation, distribution and tracking of at least one electronic message to at least one predetermined potential customer, said system comprising:

- a) a data storage system configured to organize and store a plurality of content, selected portions of said content for insertion into the at least one electronic message; ([0046], database of resumes,(e.g. content))
- b) a production system configured to create of the at least one electronic message, said at least one electronic message having a predetermined theme, wherein content having the predetermined theme can be inserted into the at least one electronic message; [0032, 0033]
- c) a messaging system configured to transmit at least one electronic message to the at

least one predetermined potential customer, said messaging system and the at least one predetermined customer being interconnected by at least one communication network; ([0038 & 0039], sending of email to said email target, (e.g. potential customer))

d) a tracking system configured to collect and evaluate notifications based on interaction with the at least one electronic message by the at least one predetermined potential customer; [0038]

wherein the data storage system, production system, messaging system and tracking system comprise one or more electronically interconnected computers thereby enabling electronic information transfer there between wherein the production system and messaging system are further configured to create and transmit a subsequent electronic message to the at least one predetermined potential customer [0046, 0032, 0033, 0038, & 0039] but does not explicitly disclose wherein content related to said collected and evaluated notifications can be incorporated into the subsequent electronic message.

However Aram discloses wherein content related to said collected and evaluated notifications can be incorporated into the subsequent electronic message. (see for example [0185] that discloses a customer being emailed the details of the potential problem if a certain threshold is met, said email including the details of said potential problems)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the system of Foulger so as to include content related to said collected and evaluated notifications to be incorporated into the subsequent electronic message in order to provide a method of enabling enhanced targeted marketing by providing customers with emails specifically customized that informs the customers of the impact of said marketing.

In regards to **claim 2**, Foulger discloses a system as in claim 1, wherein the plurality of content within the data storage system can be associated with one or more descriptors, wherein the data storage system can be searched for content having predetermined descriptors. ([0053], campaign id, version id or a contractor id.)

In regards to **claim 3**, Foulger discloses a system as in claim 1, wherein the production system provides a means for separating a previously created electronic message into component pieces, said production system further providing a means for replacing selected component pieces with content selected from the data storage system. [0093, 0095, 0103]

In regards to **claim 5**, Foulger discloses a system as in claim 1, further comprising a targeting system providing a means for selecting the at least one predetermined customer or group of predetermined customers, wherein said selection can be made based on a predetermined criteria wherein the at least one predetermined customer or. group of predetermined customers are associated with the predetermined criteria. ([0046, 0078] and Fig 8A)

In regards to **claim 6**, Foulger discloses a system as in claim 5, wherein said predetermined criteria provides a means for the targeting system to organize a plurality of customers into categories, wherein the at least one predetermined customer or group of predetermined customers can be assigned one of more categories based on notifications received by the tracking system. [0079, 0094 & 0102 and Fig. 8B]

In regard to **claim 7**, Foulger discloses a system as in claim 1, wherein the messaging system includes a means for modeling a generic electronic message in order to personalize the generic electronic message for a selected predetermined potential customer, said modification providing a means for the tracking system to correlate notifications with the selected predetermined potential customer. [0009]

In regards to **claim 10**, Foulger discloses a system as in claim 1, further comprising a means for transmitting correspondence to a sales representative, said correspondence resulting from notifications received by the tracking system, said correspondence transmitted to the sales representative upon receipt of signal from the tracking system, thereby providing a means for the sales representative to timely respond to a request from the at least one predetermined customer. [0108]

In regards to **claim 11**, Foulger discloses a system as in claim 10, wherein the correspondence is a SMS or cellular telephone call. [0108]

In regards to **claims 13 & 17**, Foulger discloses or the creation, distribution and tracking of at least one electronic message to at least one predetermined potential customer, said method comprising the steps of:

- a) organizing and storing plurality of content, selected portions of said content for insertion into the at least one electronic message; [0046],

b)creating the at least one electronic message, said at least one electronic message having a predetermined theme, wherein content having the predetermined theme can be inserted into the at least one electronic message; [0032, 0033]

c)transmitting the at least one electronic message to the at least one predetermined potential customer; [0038 & 0039],

d)collecting and evaluating notifications based on interaction with the at least one electronic message by the at least one predetermined potential customer; [0046, 0032, 0033, 0038, & 0039]

e) creating and transmitting, using one or more of said system of computers, a subsequent electronic message to the at least one predetermined potential customer, but does not explicitly disclose wherein content related to said collected and evaluated notifications can be incorporated into the subsequent electronic message

However Aram discloses wherein content related to said collected and evaluated notifications can be incorporated into the subsequent electronic message. (see for example [0185]that discloses a customer being emailed the details of the potential problem if a certain threshold is met, said email including the details of said potential problems)

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the system of Foulger so as to include content related to said collected and evaluated notifications can be incorporated into the subsequent electronic message. in order to provide a method of emailing potential customer in response to any received notifications that would have been received.

In regards to **claim 14**, Foulger discloses a method as in claim 13, wherein prior to the step of organizing and storing the plurality of content, each piece of content of the plurality of content can have at least one descriptor associated therewith thereby providing a means for organizing the plurality of content. [0053]

In regards to **claim 15**, Foulger discloses a method as in claim 13, wherein the step of creating the at least one electronic message includes inserting at least one interaction point into the at least one electronic message, said interaction point including a means for transmitting notifications to a tracking system. [0011]

In regards to **claim 16**, Foulger discloses a method as in claim 13, wherein the step of collecting and evaluating notifications provides a means for determining a theme for an electronic message subsequently transmitted to the same at least one potential customer. [0078 – 0079]

7. **Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over Foulger (20020032738) in view of Aram (2002/0072988) and in further view of Janakiraman et al. (US 20030023598)

In regards to **claim 4**, Foulger and Aram discloses a system as in claim 1, but does not

explicitly disclose wherein the production system provides a means for separating a multimedia content item into component pieces and creating a "semantic outline thereof, said production system further providing a means for presenting the semantic outline alongside the multimedia content item, said production system providing a means for modification of the multimedia content item through replacement of component peices with alternate content selected from the data storage system producing amended multimedia content item, said production system thereby enabling viewing of the amended multimedia content item simultaneously with the semantic outline for ease of amendment.

However Janakiraman discloses wherein the production system provides a means for separating a multimedia content item into component pieces and creating a "semantic outline thereof, said production system further providing a means for presenting the semantic outline alongside the multimedia content item, said production system providing a means for modification of the multimedia content item through replacement of component peices with alternate content selected from the data storage system producing amended multimedia content item, said production system thereby enabling viewing of the amended multimedia content item simultaneously with the semantic outline for ease of amendment. [0048 & 0049]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention, to have modified system of Foulger as to include provides a means for separating a multimedia content item into component pieces and creating a "semantic outline thereof, said production system further providing a means for presenting the semantic outline alongside the multimedia content item, said production system providing a means for modification of the multimedia content item through replacement of component pieces with alternate content elected

from the data storage system producing amended multimedia content item, said production system thereby enabling viewing of the amended multimedia content item simultaneously with the semantic outline for ease of amendment., in order to provide a system of editing said multimedia content, enabling the ability to manipulate multimedia, by labeling, thereby allowing the media to be organized, edited for suitable use and to be stored for later use, since so doing could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

8. **Claims 8, 9, and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Foulger (20020032738) in view of Aram (2002/0072988) and in further view of Official Notice.

In regards to **claim 8**, Foulger and Aram discloses a system as in claim 7, but does not explicitly disclose wherein the messaging system includes a means for electronically transmitting the at least one electronic message to an intermediate host, said intermediate host subsequently transmitting the at least one electronic message to the at least one predetermined customer, and said intermediate host; being identified to the at least one predetermined customer as originator of the transmission of the at least one electronic message. However transmitting an electronic message to an intermediate host and said intermediate host transmitting to a predetermined recipient is well known to those of ordinary skill in the art, and Official Notice to that effect is hereby taken. For example when sending an electronic message over the Internet, the message will be received and forwarded through several router servers (e.g. intermediate hosts) before reaching its destination.

It would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Foulger so as to have included a means for electronically transmitting the at least one electronic message to an intermediate host, said intermediate host subsequently transmitting the at least one electronic message to the at least one predetermined customer, and said intermediate host; being identified to the at least one predetermined customer as originator of the transmission of the at least one electronic message, in order to provide the ability to send electronic messages internationally, since doing so could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

In regards to **claim 9**, Foulger and Aram discloses a system as in claim 1, but does not explicitly disclose a monitoring system for evaluating the functionality of the distributed electronic management system, said monitoring system providing a means for transmission of an alarm to a system manager upon detection of a potential problem. However evaluating an electronic system and sounding an alarm upon detection of a problem is well known to those of ordinary skill in the art, and Official Notice to that effect is hereby taken. For example the security application monitoring a personal computer sounds an alarm if a virus is detected in the personal computer.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have modified the system of Foulger so as to have evaluating the functionality of the distributed electronic management system, said monitoring system providing a means for transmission of an alarm to a system manager upon detection of a potential problem in order to

provide users with an application to monitor the system to insure the system is running efficiently, since doing so could be performed readily and easily by any person of ordinary skill in the art, with neither undue experimentation, nor risk of unexpected results.

In regards to **claim 12**, Foulger and Aram discloses a system as in claim 1, comprising a firewall [0065] but does not explicitly disclose further comprising a data replication system enabling data transfers from a first database to a second database, wherein the first and second databases are each protected by a firewall type system. However copying information between multiple databases protected by a firewall is well known to those of ordinary skill in the art, and Official Notice to that effect is hereby taken. For example, it is common for nationwide companies to backup local files onto a separate national server, each protected with its own firewall., for security purposes.

It would have been obvious to one of ordinary skill in the art, at the time of the invention to have modified the system of Foulger so as to have included a data replication system enabling data transfers from a first database to a second database, wherein the first and second databases are each protected by a firewall type system, in order to have a backup information of the first copied to the second database and to have a firewall to insure security while copying information.

Response to Arguments

9. Applicant's arguments filed December 09, 2009 have been fully considered but they are not persuasive.

In regards to the applicant's arguments of claim 1, 13, and 17, are considered moot in light of the updated prior art rejection disclosed above.

Applicant also argues the official notice taken in the previous rejections of claims 8,9, and 12 by stating that, "each of the dependent claims 8,9, and 12 is at least allowable for the reasons noted with respect to independent claim 1" This is not an adequate traversal. MPEP 2144.03 states the following:

To adequately traverse such a finding an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate.

Applicant's traversal fails to meet the standard for an adequate traversal because it fails to establish why the noticed fact is not considered to be common knowledge or well-known in the art. Therefore the common knowledge or well-known in the art statement is taken to be admitted prior art.

Applicant submits that claims 2-7, 10-11, 14-16 are allowable in view of Applicant's arguments made in regard to the amended independent claims. For the same reasons above regarding the dependent claims, the Examiner respectfully disagrees.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARNELL POUNCIL whose telephone number is (571)270-3509. The examiner can normally be reached on Monday to Thursday 8 to 5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynda Jasmin can be reached on (571)272-6782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. P./
Examiner, Art Unit 3688

/C. Michelle Tarac/
Primary Examiner, Art Unit 3688